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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,482	05/18/2001	Mark Verrall	MERCK-1972 D1	5264
23599	7590	02/17/2004	EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			HON, SOW FUN	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/859,482	Applicant(s) VERRALL ET AL.	
	Examiner Sow-Fun Hon	Art Unit 1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

- 1. ☒ A Notice of Appeal was filed on 22 January 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
- 2. ☒ The proposed amendment(s) will not be entered because:
 - (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment to advisory action.

- 3. ☐ Applicant's reply has overcome the following rejection(s): _____.
- 4. ☒ Newly proposed or amended claim(s) 35 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
- 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.
 Claim(s) objected to: 29.
 Claim(s) rejected: 14-28 and 30-34.
 Claim(s) withdrawn from consideration: _____.

- 8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
- 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
- 10. ☒ Other: Attachment to advisory action

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Advisory Action

1. The proposed amendment in combination with the remarks in the response filed 12/22/03 will not be entered because they raise new issues that require further consideration and search. Newly proposed claim 35 would be allowable if submitted in a separately, timely filed amendment canceling the non-allowable claims.
2. Applicant argues in the response filed 12/22/03 that the angle variation in a cholesteric film as taught by Siesmensmeyer is different from that of the present application, and goes on to contrast a diagram of the film of Applicant versus a diagram which is Applicant's envisage of the film of Siesmensmeyer.

Applicant is respectfully reminded that in Applicant's arguments filed 06/24/2003, in response to the 112, 2nd paragraph rejection of claim 14 on which claim 15 is dependent, Applicant stated that the "breadth of a claim is not to be equated with indefiniteness" (page 12, last paragraph) so that "only specifying one optical axis is sufficient". Applicant was therefore presumed to be in tacit agreement with the Office on the validity of the breadth of the interpretation of the structural component of the claim language.

Furthermore, Applicant's diagram of the cholesteric film of Siesmensmeyer appears to comprise two layers. Broer, the primary reference, teaches a tilt angle ('392, column 3, lines 1-10). Siesmensmeyer teaches that varying the angle of the structure allows different colors to be observed depending on the viewing angle ('880, column 1, lines 15-45) therefore providing motivation to vary the tilt angle of Broer continuously in a direction normal to the plane of the layer, starting from a minimum value ranging to a maximum value. Hasabe, which was previously cited and discussed, is evidence that a varying tilt angle (a hybrid alignment) which


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varies continuously (comprising a continuous change) in a direction normal to the layer starting from a minimum value at the side of the layer to a maximum value on the opposite side of the layer (from vertical to horizontal alignment in the thickwise direction) ('457, column 17, lines 1-15) is well known to one of ordinary skill in the art at the time of the present application.

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (571)272-1492. The examiner can normally be reached Monday to Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (571)272-1498. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sow-Fun Hon
02/04/03


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

2/5/04